

§ 3.305

paragraph, “fear of hostile military or terrorist activity” means that a veteran experienced, witnessed, or was confronted with an event or circumstance that involved actual or threatened death or serious injury, or a threat to the physical integrity of the veteran or others, such as from an actual or potential improvised explosive device; vehicle-imbedded explosive device; incoming artillery, rocket, or mortar fire; grenade; small arms fire, including suspected sniper fire; or attack upon friendly military aircraft, and the veteran’s response to the event or circumstance involved a psychological or psycho-physiological state of fear, helplessness, or horror.

(4) If the evidence establishes that the veteran was a prisoner-of-war under the provisions of §3.1(y) of this part and the claimed stressor is related to that prisoner-of-war experience, in the absence of clear and convincing evidence to the contrary, and provided that the claimed stressor is consistent with the circumstances, conditions, or hardships of the veteran’s service, the veteran’s lay testimony alone may establish the occurrence of the claimed in-service stressor.

(5) If a posttraumatic stress disorder claim is based on in-service personal assault, evidence from sources other than the veteran’s service records may corroborate the veteran’s account of the stressor incident. Examples of such evidence include, but are not limited to: records from law enforcement authorities, rape crisis centers, mental health counseling centers, hospitals, or physicians; pregnancy tests or tests for sexually transmitted diseases; and statements from family members, roommates, fellow service members, or clergy. Evidence of behavior changes following the claimed assault is one type of relevant evidence that may be found in these sources. Examples of behavior changes that may constitute credible evidence of the stressor include, but are not limited to: a request for a transfer to another military duty assignment; deterioration in work performance; substance abuse; episodes of depression, panic attacks, or anxiety without an identifiable cause; or unexplained economic or social behavior changes. VA will not deny a

38 CFR Ch. I (7–1–16 Edition)

posttraumatic stress disorder claim that is based on in-service personal assault without first advising the claimant that evidence from sources other than the veteran’s service records or evidence of behavior changes may constitute credible supporting evidence of the stressor and allowing him or her the opportunity to furnish this type of evidence or advise VA of potential sources of such evidence. VA may submit any evidence that it receives to an appropriate medical or mental health professional for an opinion as to whether it indicates that a personal assault occurred.

(Authority: 38 U.S.C. 501(a), 1154)

[26 FR 1580, Feb. 24, 1961, as amended at 31 FR 4680, Mar. 19, 1966; 39 FR 34530, Sept. 26, 1974; 58 FR 29110, May 19, 1993; 64 FR 32808, June 18, 1999; 67 FR 10332, Mar. 7, 2002; 70 FR 23029, May 4, 2005; 73 FR 64210, Oct. 29, 2008; 75 FR 39852, July 13, 2010]

§ 3.305 Direct service connection; peacetime service before January 1, 1947.

(a) *General.* The basic considerations relating to service connection are stated in §3.303. The criteria in this section apply only to disabilities which may have resulted from service other than in a period of war before January 1, 1947.

(b) *Presumption of soundness.* A peacetime veteran who has had active, continuous service of 6 months or more will be considered to have been in sound condition when examined, accepted and enrolled for service, except as to defects, infirmities or disorders noted at the time thereof, or where evidence or medical judgment, as distinguished from medical fact and principles, establishes that an injury or disease preexisted service. Any evidence acceptable as competent to indicate the time of existence or inception of the condition may be considered. Determinations based on medical judgment will take cognizance of the time of inception or manifestation of disease or injury following entrance into service, as shown by proper service authorities in service records, entries or reports. Such records will be accorded reasonable weight in consideration of other evidence and sound medical reasoning. Opinions may be solicited from

Department of Veterans Affairs

§ 3.307

Department of Veterans Affairs medical authorities when considered necessary.

(c) *Campaigns and expeditions.* In considering claims of veterans who engaged in combat during campaigns or expeditions satisfactory lay or other evidence of incurrence or aggravation in such combat of an injury or disease, if consistent with the circumstances, conditions or hardships of such service will be accepted as sufficient proof of service connection, even when there is no official record of incurrence or aggravation. Service connection for such injury or disease may be rebutted by clear and convincing evidence to the contrary.

[26 FR 1580, Feb. 24, 1961, as amended at 28 FR 3088, Mar. 29, 1963; 39 FR 34530, Sept. 26, 1974]

§ 3.306 Aggravation of preservice disability.

(a) *General.* A preexisting injury or disease will be considered to have been aggravated by active military, naval, or air service, where there is an increase in disability during such service, unless there is a specific finding that the increase in disability is due to the natural progress of the disease.

(Authority: 38 U.S.C. 1153)

(b) *Wartime service; peacetime service after December 31, 1946.* Clear and unmistakable evidence (obvious or manifest) is required to rebut the presumption of aggravation where the preservice disability underwent an increase in severity during service. This includes medical facts and principles which may be considered to determine whether the increase is due to the natural progress of the condition. Aggravation may not be conceded where the disability underwent no increase in severity during service on the basis of all the evidence of record pertaining to the manifestations of the disability prior to, during and subsequent to service.

(1) The usual effects of medical and surgical treatment in service, having the effect of ameliorating disease or other conditions incurred before enlistment, including postoperative scars, absent or poorly functioning parts or organs, will not be considered service

connected unless the disease or injury is otherwise aggravated by service.

(2) Due regard will be given the places, types, and circumstances of service and particular consideration will be accorded combat duty and other hardships of service. The development of symptomatic manifestations of a preexisting disease or injury during or proximately following action with the enemy or following a status as a prisoner of war will establish aggravation of a disability.

(Authority: 38 U.S.C. 1154)

(c) *Peacetime service prior to December 7, 1941.* The specific finding requirement that an increase in disability is due to the natural progress of the condition will be met when the available evidence of a nature generally acceptable as competent shows that the increase in severity of a disease or injury or acceleration in progress was that normally to be expected by reason of the inherent character of the condition, aside from any extraneous or contributing cause or influence peculiar to military service. Consideration will be given to the circumstances, conditions, and hardships of service.

[26 FR 1580, Feb. 24, 1961, as amended at 57 FR 59296, Dec. 15, 1992]

§ 3.307 Presumptive service connection for chronic, tropical or prisoner-of-war related disease, or disease associated with exposure to certain herbicide agents; wartime and service on or after January 1, 1947.

(a) *General.* A chronic, tropical, prisoner of war related disease, or a disease associated with exposure to certain herbicide agents listed in § 3.309 will be considered to have been incurred in or aggravated by service under the circumstances outlined in this section even though there is no evidence of such disease during the period of service. No condition other than one listed in § 3.309(a) will be considered chronic.

(1) *Service.* The veteran must have served 90 days or more during a war period or after December 31, 1946. The requirement of 90 days' service means active, continuous service within or extending into or beyond a war period, or